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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/817,950	03/27/2001	Paul M. Guyre	DC-0153	4097

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EXAMINER
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BELYAVSKYI, MICHAEL A

ART UNIT	PAPER NUMBER
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1644

DATE MAILED: 07/03/2003

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Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action**

Application No.

09/817,950

Applicant(s)

GUYRE ET AL.

Examiner

Michail A Belyavskyi

Art Unit

1644

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 23 June 2003 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

**PERIOD FOR REPLY** [check either a) or b)]

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on \_\_\_\_\_. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ they raise the issue of new matter (see Note below);
- (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_.

3. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.
4. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: \_\_\_\_\_.

Claim(s) objected to: \_\_\_\_\_.

Claim(s) rejected: 1-3.

Claim(s) withdrawn from consideration: \_\_\_\_\_.

8. ☐ The proposed drawing correction filed on \_\_\_\_\_ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_.
10. ☒ Other: See Continuation Sheet

Continuation of 5. does NOT place the application in condition for allowance because: Claims 1-3 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Coligan et al. (Current Protocols in Immunology, Greene Publishing Associates and Wiley-Interscience, New York, 1991; pages 2.1.1-2.1.3, 2.1.9-2.1.11, and 2.1.17-2.1.22) in view of U.S. Patent 5,077,216, and Zwadlo et al (IDS Reference BA) for the same reasons set forth in the previous Office Actions, Paper No 13, mailed 3/24/03 .

Applicant's arguments filed 6/23/03 have been fully considered but they are not persuasive.

Applicant asserts that : (i) Zwadlo et al does not teach monitoring the course of an inflammatory condition by detecting CD163; (ii) Coligan et al. only teach general method for conducting ELISAs and the '216 patent discloses antibodies against p155 ( MAC2-158 and MAC2-48 and fails to provide any teaching or suggestion of CD163 acting as an early signaling event in the inflammatory response and there is no suggestion to combine the references.

Contrary to Applicant's assertions, it is noted that Applicants have traversed the primary and the secondary references pointing to the differences between the claims and the disclosure in each reference. Applicant is respectfully reminded that the rejection is under 35 USC 103 and that unobviousness cannot be established by attacking the references individually when the rejection is based on the combination of the references. see In re Keller, 642 F.2d 4B, 208 USPQ 871, 882 (CCPA 1981) See MPEP 2145. This applicant has not done, but rather argues the references individually and not their combination. One cannot show non-obviousness by attacking references individually where the rejections are based on a combination of references. In re Young 403 F.2d 759, 150 USPQ 725 (CCPA 1968).

In addition, it is noted that it appears that applicant and the examiner differ on interpretation of both the claimed methods and the prior art. It is the Examiner's position that Zwadlo et al. teach a method of monitoring the course of an inflammatory condition/process comprising detecting RM3/1 antigen (i.e. CD161 antigen) in biological sample. Zwadlo et al. teach that RM3/1 antigen was found to be expressed to varying degrees, depending on the stage of inflammation ( see page 299 in particular). Further, in acute inflammatory sites RM3/1 positive macrophages are found in various amounts depending on the stage of inflammation ( page 303 in particular).


It would have been obvious to one of ordinary skill in the art at the time the invention was made to use the MAC2-158 or MAC2-48 antibodies as capture antibodies taught by the '216 patent and the antibodies taught by Zwadlo et al. as the detection antibody in the ELISA assay taught by Coligan et al. to have a method for monitoring the course of an inflammatory condition or inflammatory response in a patient by detecting the levels of CD163 in the biological sample as taught by Zwadlo.

One of ordinary skill in the art would have been motivated to use the antibodies taught by the '216 patent and Zwadlo et al. in the ELISA taught by Coligan et al. because to detect and monitor the presence of CD163 in a biological sample, such as human plasma, during an inflammatory condition/process, such as rheumatoid arthritis by detecting CD163 (i.e. RM3/1 antigen) as taught by Zwadlo et al.

One of ordinary skill in the art at the time the invention was made would have been motivated to do so, because detecting CD163 levels can be used to monitor an inflammatory response cascade in the patient, as taught by Zwadlo et al. CD163 levels in biological sample can be detected using the antibodies taught by the '216 patent and Zwadlo et al. in the ELISA taught by Coligan et al.

From the combined teaching of the references, it is apparent that one of ordinary skill in the art would have had a reasonable expectation of success in producing the claimed invention. Therefore, the invention as a whole was prima facie obvious to one of ordinary skill in the art at the time the invention was made, as evidenced by the references, especially in the absence of evidence to the contrary..

Continuation of 10. Other: This case is technically abandoned because the period for reply expired on 6/24/03 and Applicant has not obtained any extension of time.

  
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